

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Justin Allen,

Plaintiff,

v.

Kelly Holden et al.,

Defendants.

Civil Action No. 23-11404

Hon. Jonathan J.C. Grey

Magistrate Judge David Grand

**ORDER ADOPTING REPORT AND
RECOMMENDATION (ECF No. 31)**

On June 13, 2023, Justin Allen filed this 42 U.S.C. § 1983 prisoner civil rights suit pro se against Michigan Department of Corrections (“MDOC”) officials Kelly Holden, B. Simon, and John/Jane Does 1–15. (ECF No. 1.) On July 20, 2023, all pretrial matters in this case were referred to United States Magistrate Judge David R. Grand. (ECF No. 9.)

Allen later filed a motion to amend his complaint (ECF No. 20), and Judge Grand granted it. (ECF No. 30.) Allen amended his complaint on November 13, 2023 to add claims against Michelle Floyd and Heidi Washington. (ECF No. 21.)

On September 19, 2023, defendants Holden and Simon filed a motion for summary judgment on the basis of exhaustion. (ECF No. 14.)

Allen filed a response (ECF No. 16) and, later, a sworn declaration in support of his response (ECF No. 18). Holden and Simon replied to the original response. (ECF No. 17.)

On April 22, 2024, Judge Grand held a hearing on various motions, including the motion for summary judgment. On April 23, 2024, Judge Grand issued an order on the non-dispositive motions addressed at the hearing (ECF No. 30) and a report and recommendation on the motion for summary judgment (ECF No. 31). Judge Grand recommended denying Holden's and Simon's motion for summary judgment without prejudice for the reasons stated on the record at the hearing. (*Id.*)

A party may object to any specified portion, proposed findings, or recommendation in the magistrate judge's report within fourteen days of being served with a copy. 28 U.S.C. § 636(b)(1). For any specific objection, the district judge is to make a de novo determination of the issue. *Id.* The district judge may accept, reject, or modify, in whole or in part, any findings or recommendations. *Id.* Judge Grand issued his report on April 23, 2024, which made any objections to it due on May 7, 2024. No objections have been filed as of the date of this order.

When no objection is made, the district judge may sua sponte review the report and recommendation, *Thomas v. Arn*, 474 U.S 140, 154 (1985); however, there is no obligation to independently review the report and recommendation. *Hall v. Chapman*, 627 F. Supp. 3d 804, 806 (E.D. Mich. 2022) (citing *Thomas* 474 U.S. at 149–52). Under sua sponte review, with no objection, the district judge may use a “de novo or any other standard.” *Thomas*, 474 U.S. at 154.

After reviewing the report and recommendation and Judge Grand’s reasons stated on the record, the Court finds that the report and recommendation is well-reasoned and supported by the applicable law.

The Court **ADOPTS** Judge Grand’s report and recommendation (ECF No. 31). The Court **DENIES WITHOUT PREJUDICE** Holden’s and Simon’s motion for summary judgment. (ECF No. 14.)

SO ORDERED.

Date: August 21, 2024

s/ Jonathan J.C. Grey
Jonathan J.C. Grey
United States District Judge

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 21, 2024.

s/ S. Osorio
Sandra Osorio
Case Manager